

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT L. CHRISTENSEN,

Plaintiff/Counter-Defendant-
Appellee,

v

DEBORAH A. CHRISTENSEN,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

April 6, 2004

No. 244995

Clinton Circuit Court

LC No. 02-015221-DO

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right the property distribution in the parties' judgment of divorce. We affirm.

The parties were married on July 8, 1972, and separated on January 14, 2002. They have two children who have reached the age of majority. Both parties are well educated, with plaintiff having a bachelor's degree and defendant having a master's degree in Educational Psychology. At the time of trial, plaintiff was fifty-two years of age, had worked for the State of Michigan for twenty-four years, and was earning approximately \$53,600 per year. Defendant was forty-nine years of age and was also working for the State of Michigan, earning approximately \$56,600 per year.

In February 2002, plaintiff learned of an early retirement option offered by the state. In March 2002 plaintiff elected to take the early retirement option, but had to "buy" four years of time to qualify. At the time of trial, plaintiff had already authorized the purchase of the time using funds from his 401K account, but had not yet signed the papers necessary to finalize the early retirement option. Plaintiff testified, however, that he could still decline to take the early retirement, but that if he failed to finalize his early retirement papers he would not have a job to go back to and would be laid-off from his job. He would then not be eligible for retirement until age sixty. Plaintiff further testified that he was employed in the specialized field of HMO contract management and would have a difficult time finding another job. He stated that he would need his full pension of approximately \$2,500 per month to live without getting another job.

Plaintiff testified that the marriage began to break down years before he filed for divorce and that he discontinued a marital relationship with defendant in 1992. Plaintiff admitted that he engaged in a four-year affair with a foreign exchange student that the parties hosted that began in 1998 and ended in September 2001 when the student returned to England.

At trial, the parties agreed that the main issue presented to the trial court for resolution was the property division, primarily the valuation and division of plaintiff's pension. The expert witness for both parties performed a valuation on both parties' pension funds. The expert valued defendant's pension fund at \$131,944.59 before tax and \$104,883.56 after tax. The expert valued plaintiff's pension fund at \$494,425.28 before tax and \$405,074.95 after tax. This valuation included the early retirement incentive offered by the state. Without the early retirement incentive, the pretax value of plaintiff's pension fund was \$169,286.36.

Defendant asked for a sixty-percent share, across the board, of the marital estate. The trial court found plaintiff significantly at fault for the marital collapse and ruled that "a disproportionate division of the marital estate is appropriate." The court stated, however, "while fault is certainly a factor in this case, it is not the only factor for the Court to consider. The Court is required to divide the estate fairly and equitably considering all the circumstances involved." In addition to fault, the court considered the duration of the marriage, the contributions of the parties to the joint estate, the parties' station in life and earning capabilities, and other equitable circumstances in order to fairly divide the estate. The court specifically noted that

- (1) Defendant knew that her marriage was strained for more than 9 years.
- (2) Defendant is in good health and has a good job. Her long-term economic picture is secure, and it is not dependent on plaintiff. She also enjoys her own circle of friends and is young enough to, potentially, remarry;
- (3) There are sufficient assets to compensate defendant for the wrong she suffered, without putting plaintiff in a position that prohibits his financial survival;
- (4) Plaintiff was prepared to retire and live on \$2,500 per month, but has the present capacity to work and support himself. The court is more concerned with his long-term, rather than immediate, economic survival. If the Court awards too much of his pension to defendant, plaintiff may experience severe financial crisis in his old age; and,
- (5) Pensions comprise a significant percentage of the marital estate. However, the parties' pensions will only reach their projected present value if they live out their life expectancy.

In consideration of these facts, the court awarded defendant sixty-two percent of the marital assets, one hundred percent of her own pension with the State of Michigan, and twenty percent of plaintiff's pension.¹ Plaintiff was awarded eighty percent of his pension, or \$2,050 per month.² Defendant moved for reconsideration with regard to plaintiff's pension. The trial court denied the motion, stating "The Court specifically determined to treat the parties' pensions different than the other marital assets, for the reasons set forth in said Opinion."

Defendant argues that the overall distribution of the marital property³ is inequitable because the trial court found plaintiff at fault for the breakdown of the marriage. She contends that in light of the finding of fault, she should have been awarded more than fifty percent of the marital property, rather than the forty-eight percent she was awarded.

In reviewing a trial court's property division in a divorce, this Court must first consider the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The court's findings will not be reversed unless they are clearly erroneous, i.e., this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Draggoo, supra* at 429-430.

¹ We note that the trial court's opinion and order following trial states that, "It is ordered that plaintiff shall continue with his planned retirement from the State of Michigan as scheduled by November 1, 2002." A review of the record reveals that plaintiff accepted the early retirement option but at the time of trial plaintiff had not yet signed the papers necessary to finalize the early retirement option. However, plaintiff's ability to revoke his option to take the early retirement option expired on May 15, 2002. Therefore, if plaintiff did not sign the final retirement papers he could not resume his employment but, rather would be laid off and would not be eligible for retirement until age sixty. The judgment of divorce was based on certain factual findings, one of which was the value of plaintiff's pension in light of the early retirement incentive. This factual finding would be erroneous if plaintiff did not take advantage of the early retirement option. In practicality, the judgment did not order defendant to accept the early retirement offer as defendant has suggested.

² The property award is as follows:

	<u>Appellant</u>	<u>%</u>	<u>Appellee</u>	<u>%</u>	<u>Total</u>
After tax assets	145,411	62.2	88,458	37.2	23,869
Pre-tax Assets	111,531	61.1	70,878	38.9	182,409
Personal Property	11,025	61.1	3,208	22.5	14,233
Defendant's Pension	104,888	100	0	0	104,888
Plaintiff's Pension	81,015	20	324,060	80.0	405,075

³ Plaintiff received approximately fifty-two percent and defendant received approximately forty-eight percent, which the parties' agree is approximately a \$20,000 difference in assets.

A court's goal when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court." *Id.* at 114-115. "When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance." *Id.* at 115. The significance of each factor will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.*

It is true that the trial court found plaintiff at fault for the breakdown of the marriage. Fault remains a factor in the determination of a property settlement in Michigan, but "none of [our] cases has held that it is the only factor." *Sparks, supra* at 158. "Marital misconduct is only one factor among many and should not be dispositive." *Id.* at 163. "Fault is an element in the search for an equitable division--it is not a punitive basis for an inequitable division." *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996).

Defendant's argument inappropriately elevates the issue of fault and fails to take into consideration the other *Sparks* factors that the trial court found to be particularly at issue in this case.⁴ The most significant concern to the trial court with regard to the distribution of plaintiff's pension was with regard to plaintiff's long-term economic survival. The court noted that plaintiff was fifty-two years old at the time of trial and that, based on his career path, it would be difficult for him to find suitable alternative employment. Plaintiff's sole source of income would therefore be his pension. Defendant, however, was not eligible to retire and would still be earning a living and contributing to her retirement for at least ten more years. The court had already awarded defendant sixty-two percent of the marital assets, including the parties' home and cottage, leaving plaintiff's pension fund as one of his only remaining viable assets. The trial court found that there were sufficient marital assets to compensate defendant for the wrong she suffered without putting plaintiff in a position where his long-term economic survival would be in jeopardy. In light of the trial court's detailed findings of fact and conclusions of law, we cannot conclude that a four percent variation in the division of the property was distinctly incongruent or inequitable.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

⁴ Indeed, it would have been error for the trial court to focus on the issue of fault in its property division and fail to make specific findings regarding the property division factors enumerated in *Sparks, supra*.